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From: CN=Nancy Stoner/OU=DC/O=USEPA/C=US
Sent: Sun 11/28/2010 5:36:23 PM
Subject: Fw: Mining Waste Discharges

Fyi -- unsolicited input on a topic of interest. Pretty much what you'd expect.

From: Tony Turrini [turrini@nwf.org]
Sent: 11/24/2010 04:04 PM EST
To: Nancy Stoner
Subject: Mining Waste Discharges

Hi Nancy. I participated in a teleconference on Monday in which a number of our colleagues discussed the problem of hard rock mining discharges in waters of the U.S. The group agreed that revising the CWA definition of "fill" to exclude wastes subject to effluent limitations could be an important step in controlling the pollution caused by hard rock mines. However, we were very concerned that the waste treatment system exclusion, if left intact or largely intact, would negate the positive effects of this change.

As you know, before the 2002 fill rule revision mining companies relied upon the WTS exclusion to justify discharging tailings and other wastes directly into streams and wetlands. The exclusion has always been a concern because it employs an administrative sleight of hand to convert wet areas—which everyone agrees meet the definition of waters—to non-waters where pollutants can be lawfully discharged without a permit. The practices allowed by the WTS exclusion undermine the national goals of the CWA. Moreover, there are few practical limits to the exclusion's use. Once we buy into the notion that otherwise protected waters can be considered waste treatment systems, it doesn't take a huge logical leap to imagine lakes, reservoirs, or entire rivers being considered waste treatment systems where polluters can escape the effluent limitations of section 402. This is an exception that can easily swallow the rule.

A general presumption against using the WTS exclusion in non-manmade waters would not go far enough to save the provision. It would be the biggest mines operating in the most fragile ecosystems that would be best able to overcome the presumption by demonstrating a lack of feasible alternatives. These are also the companies with the greatest wherewithal to influence permitting decisions at the regional level. A vague presumption would end up favoring the worst mining projects. It would be the Pebble Mines of the world that use the WTS exclusion to discharge billions of tons of waste into the nation's waters.

We at NWF are extremely grateful for the work you and others at EPA have done to address hard rock mine discharges. This is a unique opportunity to fix a very serious national problem. We urge you to close both of these mining loopholes. Over 30 years ago, EPA found that mines could operate profitably without discharging into waters and adopted a zero discharge effluent limitation for many copper and gold

mines. It is not unreasonable to require present-day mines to meet that same standard. Revising the fill rule without limiting the WTS exclusion to manmade waters will not achieve our mutual goal of protecting communities and wildlife from mining wastes.

Thanks for your consideration.

Tony Turrini, Senior Counsel

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